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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 **IN RE CAPACITORS ANTITRUST**
13 **LITIGATION**

Case No. 3:14-cv-03264-JD; 3:17-md-02801-JD
Hon. James Donato

14 **THIS DOCUMENT RELATES TO:**
15 **ALL INDIRECT PURCHASER**
16 **PLAINTIFF ACTIONS**

INDIRECT PURCHASER PLAINTIFFS'
RESPONSE TO THE SPECIAL MASTER'S
REPORT AND RECOMMENDATION
REGARDING IPPS' REQUEST FOR
REIMBURSEMENT OF EXPENSES

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28 **Indirect Purchaser Plaintiffs' Response to the Special Master's Report and Recommendation**
Regarding IPPs' Request for Reimbursement of Litigation Expenses

1 The Indirect Purchaser Plaintiffs' ("IPPs") hereby submit this response to the Special Master's
 2 recently submitted Report and Recommendation Regarding the Indirect Purchasers' Request for
 3 Reimbursement of Expenses. *See* ECF No. 2484.¹ In short, IPPs accept the Special Master's Report
 4 and Recommendation ("R&R") in full and request that the Court "so order" the R&R promptly so
 5 that IPPs can pay critical bills and replenish their Litigation Fund in advance of further proceedings.

6 In October of 2018, IPPs requested reimbursement of reasonably incurred litigation expenses
 7 in the amount of \$4,710,298.24. *See* ECF No. 2219 (Supplement Brief Regarding IPPs' Expenses).
 8 After extensive proceedings before Special Master Monica Ip, for the purpose of validating IPPs'
 9 request for reimbursement of litigation expenses, the R&R recommends that the Court award IPPs
 10 \$4,541,734.08 of the requested expenses. As noted *supra*, IPPs accept the R&R in full and request
 11 that an order be issued by the Court promptly adopting the R&R in full and permitting IPPs to be
 12 reimbursed for such litigation expenses. And while IPPs do not contest the Special Master's findings,
 13 particularly given the extended nature of these proceedings and the need to bring this matter to a
 14 conclusion, IPPs did want to note for the Court that simply because certain minimal IPP expenses
 15 could not now—many years later—be supported by receipts does not *a fortiori* mean that the expenses
 16 were not actually incurred. For example, the R&R finds that approximately \$9,000 in claimed
 17 individual firm expenses were not supported by receipts. *See* R&R at Exhibit 1. But some actually
 18 incurred expenses would not be reflected in receipts. For example, while certain IPP counsel
 19 submitted individual firm expenses for parking—either for hearings or depositions—parking meters
 20 do not themselves provide receipts, but this does not mean the expenses were not actually incurred.
 21 Again, IPPs are not contesting the Special Master's findings in any way and wish to proceed with full
 22 adoption of the R&R, but IPPs did want to provide appropriate context for the claimed expenses.

23 Similarly, IPPs followed strict guidelines and issued mandates to co-counsel that per diem
 24 meals were not to exceed \$75, in accord with this Court's order. For the overwhelming majority of
 25 travel occurring on this case, that guideline was strictly followed with the R&R finding only \$94.09
 26 had to be reduced for days that exceeded that threshold. *See* R&R at Exhibit 1. IPPs believe that for
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28 ¹ All "ECF" references are to the original docket in this case, Case No. 3:14-cv-03264-JD

the majority of these identified meals (and there were only four identified cases), multiple counsel were present—either other IPP counsel traveling for the deposition, or DPP counsel—with one attorney paying, making it appear as though the meal was over the per diem amount for that individual on that day. And while IPPs identified several such instances—given the passage of time—IPPs were unable to identify them for these four instances. IPPs provide the foregoing information solely to provide additional context and information to the Court, not to challenge the R&R’s findings. Indeed, IPPs were pleased to see the R&R’s conclusion of only a 0.29% error rate in the Round 2 individual firm expenses. *See* R&R at n. 5.

CONCLUSION

IPPs accept in full the Special Master’s R&R concerning IPPs’ request for reimbursement of expenses regarding the Round 2 settlements and thank the Special Master for her diligent work regarding this matter. IPPs request that the Court issue an order adopting the R&R and awarding IPPs’ litigation expenses in the amount of \$4,541,734.08.

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Respectfully submitted,

/s/ Adam J. Zapala

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